

AMENDED IN ASSEMBLY JUNE 2, 2003  
AMENDED IN ASSEMBLY MAY 13, 2003  
AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1108**

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**Introduced by Assembly Member Bermudez**

February 21, 2003

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An act to add and repeal Section 3041.5 of the Family Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1108, as amended, Bermudez. Child custody: drug testing.

Existing law requires a court to consider the habitual or continual illegal use of controlled substances, as defined, or continual use of alcohol by either parent in making a determination of the best interest of a child in child custody proceedings.

This bill would, until January 1, 2007, authorize a court to require any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances. *The bill would require the court to order the least intrusive method of testing.* The bill would provide that the results of this testing shall be confidential and maintained as a sealed record. *The bill would provide for civil sanctions not to exceed \$2,500 for any breach of the confidentiality of the test results.* The bill would prohibit the release of the test results to any person except as specified, or for any

purpose, except to assist the court in determining the best interest of the child and the content of the order or judgment determining custody or visitation. The bill would authorize the court to order either or both parties to pay the costs of the testing.

The bill would require the Judicial Council to study and evaluate the implementation of the act and to report to the Legislature on or before specified dates.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1.   Section 3041.5 is added to the Family Code, to  
2     read:  
3     3041.5.   (a) In any custody or visitation proceeding brought  
4     under this part, as described in Section 3021, the court may order  
5     any parent who is seeking custody of, or visitation with, a child  
6     who is the subject of the proceeding to undergo testing for the  
7     illegal use of controlled substances and the use of alcohol if there  
8     is a judicial determination based upon a preponderance of  
9     evidence that there is the habitual, frequent, or continual illegal use  
10    of controlled substances or the habitual or continual abuse of  
11    alcohol by the parent or legal custodian. This evidence may  
12    include, but may not be limited to, a conviction within the last five  
13    years for the illegal use or possession of a controlled substance.  
14    *The court shall order the least intrusive method of testing for the*  
15    *illegal use of controlled substances or the habitual or continual*  
16    *abuse of alcohol by either or both parents or legal custodian. The*  
17    results of this testing shall be confidential, shall be maintained as  
18    a sealed record in the court file, and may not be released to any  
19    person except the court, the parties, their attorneys, and any person  
20    to whom the court expressly grants access by written order made  
21    with prior notice to all parties. Any person who has access to the  
22    test results may not disseminate copies or disclose information  
23    about the test results to any person other than a person who is  
24    authorized to receive the test results pursuant to this section. *Any*  
25    *breach of the confidentiality of the test results shall be punishable*  
26    *by civil sanctions not to exceed two thousand five hundred dollars*

1 (\$2,500). The results of the testing may not be used for any  
2 purpose, including any criminal, civil, or administrative  
3 proceeding, except to assist the court in determining, for purposes  
4 of the proceeding, the best interest of the child pursuant to Section  
5 3011, and the content of the order or judgment determining  
6 custody or visitation. The court may order either party, or both  
7 parties, to pay the costs of the drug or alcohol testing ordered  
8 pursuant to this section. As used in this section, “controlled  
9 substances” has the same meaning as defined in the California  
10 Uniform Controlled Substances Act, Division 10 (commencing  
11 with Section 11000) of the Health and Safety Code.

12 (b) This section shall remain in effect only until January 1,  
13 2007, and as of that date is repealed, unless a later enacted statute,  
14 that is enacted before January 1, 2007, deletes or extends that date.

15 SEC. 2. (a) The Judicial Council shall study the  
16 implementation of this act and shall report to the Legislature  
17 regarding that implementation. The study shall evaluate all of the  
18 following:

19 (1) The number and percentage of custody cases in which drug  
20 or alcohol testing is ordered.

21 (2) The rate of compliance with those orders and the  
22 procedures that are followed if a parent fails to comply with the  
23 order.

24 (3) The percentage of cases in which testing is ordered and the  
25 parent tests positive for the illegal use of drugs or *the use of*  
26 alcohol.

27 (4) The impacts of those positive test results on the court’s  
28 decision to grant or deny custody or visitation.

29 (b) The Judicial Council shall submit an interim report to the  
30 Legislature no later than July 1, 2005, and shall submit a final  
31 report to the Legislature no later than July 1, 2007.

32 SEC. 3. This act is an urgency statute necessary for the  
33 immediate preservation of the public peace, health, or safety  
34 within the meaning of Article IV of the Constitution and shall go  
35 into immediate effect. The facts constituting the necessity are:

36 In order to ensure the safety of children who are the subject of  
37 custody and visitation proceedings as soon as possible, it is  
38 necessary that this act take effect immediately.

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